

REMARKS

The Applicants have carefully studied the outstanding Office Action. The Examiner's indication that claims 126 and 127 are allowed is gratefully acknowledged. The Examiner's indication that claims 102, 104, 108-112 and 122-124 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, is also gratefully acknowledged. The present response is intended to be fully responsive to all points of rejection raised by the Examiner, and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claim amendments

Claim 100 has been amended by the addition of the further limitation that the recited measurements of the second step of the method can alternatively be of the slope of the gastric emptying curve after different volumes of the meal have exited the stomach of the subject. Support for this measurement, as an alternative to the measurement of conventional gastric emptying parameters, is to be found in paragraph [0143] of the published application for the two meal method, and in paragraph [0178] for the single meal method.

Claim rejections – Double Patenting

The Examiner has stated that claims 100 and 101 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 103 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16

of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 105 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 106 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 107 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 26 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 113 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 114 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 17 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 115 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 116 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 19 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 117 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-22 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 118 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 23 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 119 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 24 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 120 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 25 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 121 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The Examiner has stated that claim 125 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 26 of co-pending Application No. 10/784,117. Although the conflicting claims are not identical, the Examiner asserts that they are not patentably distinct from each other.

The applicants state that the present application and the conflicting co-pending application No. 10/784,117 are commonly owned. The applicants' Attorney of Record submits herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). The applicants therefore respectfully request withdrawal of the Examiner's grounds of provisional rejections based on non-statutory double patenting.

Allowable Subject Matter

The Examiner has stated that claims 102, 104, 108-112 and 122-124 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The applicants respectfully submit that the terminal disclaimer filed with the present response render the base claims of the objected-to claims 102, 104, 108-112 and 122-124 as allowable, and the examiner's objections thereto as moot.


Conclusion

The applicants therefore respectfully submit that, in the light of the arguments mentioned above, and in view of the filing of the accompanying terminal disclaimer, all of claims 100-127, as amended or as previously presented, are novel and unobvious over the known prior art, and are therefore deemed to be allowable. Reconsideration and prompt allowance of this application are therefore respectfully requested.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Vladimir Sherman', written over a horizontal line.

Vladimir Sherman
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